

Education Cabinet

Kentucky Board of Education

Department of Education

702 KAR 6:100. Appeal procedures for school and community nutrition programs.

(Amendment)

RELATES TO: KRS 156.070(5), 156.160(1)(f), 7 CFR 210.18(q), 215.11, 220.13(f)(2),
225.13, 226.6(k), 42 USC 1761, 1766(e), 1772

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(5) requires the

Kentucky Board of Education to promulgate administrative regulations governing the

operation of programs within the Department of Education. This administrative

regulation establishes the appeals procedure for a sponsor of a federal nutrition program.

Section 1. Actions That [~~Which~~] May be Appealed. (1) A school food authority that

sponsors the National School Lunch Program, the Special Milk Program or the School

Breakfast Program may appeal the following adverse actions:

(a) Denial of all or part of a claim for reimbursement arising from administrative or
follow-up review activity; or

(b) Withholding payment arising from administrative or follow-up review activity.

(2) A sponsor of the Child and Adult Care Food Program, including an independent

center or sponsoring organization on behalf of a facility under its jurisdiction, and

responsible principals and responsible individuals, may appeal the following adverse actions:

- (a) Denial of a new or renewing ~~[an]~~ institution's application for participation;
- (b) Denial of an application submitted by a sponsoring organization on behalf of a facility or site;
- (c) Notice of proposed termination of participation of ~~[on]~~ an institution or facility or site;
- (d) Suspension of an institution's agreement;
- (e) Denial of an institution's application for start-up payments;
- (f) Denial of an advance payment;
- (g) Denial of all or part of a claim for reimbursement except for a late claim;
- (h) Notice of proposed disqualification of a responsible principal or a responsible individual;
- (i) Recovery of all or part of an advance in excess of the claim for the applicable period;
- (j) Decision by the Department of Education not to forward to Food and Nutrition Service (FNS) an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim;
- (~~k~~) ~~[(h)]~~ Demand for the remittance of an overpayment; or
- (~~l~~) ~~[(i)]~~ Any other action of the Department of Education affecting the participation of an institution in the program or the institution's claim for reimbursement.

(3) A program sponsor or a food service management company (FSMC) participating in the Summer Food Service Program for Children may appeal the following adverse actions:

- (a) Denial of an application for participation;

- 1 (b) Denial of a sponsor's request for an advance payment;
- 2 (c) Denial of a sponsor's claim for reimbursement, except for a late claim under 7 CFR
- 3 225.9(d)(5);
- 4 (d) Refusal of a state agency to forward to FNS ~~[the Division of School and Community~~
- 5 ~~Nutrition]~~ an exception request for payment of a late claim or a request for an upward
- 6 adjustment to a claim;
- 7 (e) A claim against a sponsor for remittance of a payment ~~[claim]~~;
- 8 (f) Termination of the sponsor or a site;
- 9 (g) Denial of a sponsor's application for a site; or
- 10 (h) Denial of a food service management company's application for a registration or the
- 11 revocation of a food service management company's registration.

12 Section 2. Appeal Timelines. (1) ~~[(a)]~~ A program sponsor, responsible principal, and

13 responsible individual aggrieved by an adverse action of the Division of School and

14 Community Nutrition (the "division") may appeal the action by filing a timely request for

15 an appeal ~~[a review]~~. The request shall be filed with the Director, Division of School and

16 Community Nutrition, Kentucky Department of Education, 2545 Lawrenceburg Road

17 ~~[1024 Capital Center Drive]~~, Frankfort, Kentucky, 40601.

18 (2) ~~[(b)]~~ The request shall be in writing and shall state the name and address of the

19 program sponsor and the name and title of the person who signed the request.

20 (3) ~~[(c)]~~ The request shall be postmarked or received by the division prior to midnight of

21 the fifteenth calendar day (tenth working day in the case of the Summer Food Service

22 Program) after receipt of the notice of adverse action. If the 15th day (tenth working day

23 in the case of the Summer Food Service Program) falls on a Saturday, Sunday, or federal

1 legal holiday, the request shall be timely if it is postmarked or received the next day
 2 which is not a Saturday, Sunday, or federal legal holiday.

3 (4) The division shall acknowledge receipt of the request for an appeal within ten (10)
 4 days of its receipt of the request.

5 (5) [(d)] Any information on which the division's action was based shall be available for
 6 inspection by the institution and the responsible principal and responsible individual from
 7 the date of receipt of the request for an appeal. [A program sponsor which has filed an
 8 appeal and request for review may examine and copy the information in the division files
 9 upon which the adverse action was based.]

10 (6) During the review process, a program sponsor, responsible principal, responsible
 11 individual or food service management company shall:

- 12 1. Self-represent [itself]; or
- 13 2. Be represented by legal counsel.

14 Section 3. Filing An Appeal. (1) [(a)] A request for appeal shall clearly identify the
 15 adverse action being appealed, the basis of the appeal, and the relief or remedy sought. It
 16 shall also include the date of the letter or other written communication from the division
 17 notifying the program sponsor of the proposed adverse action, and the name and title of
 18 the division official who signed the letter or communication. If a hearing before a hearing
 19 officer is desired, that shall be clearly stated.

20 (2) If the institution's representative or the responsible principal and responsible
 21 individual or their representative fail to appear at a scheduled hearing, the right to a
 22 personal appearance before the designated hearing officer shall be waived unless the
 23 designated hearing officer agrees to reschedule the hearing.

1 (3) A representative of the state agency shall be allowed to attend the hearing to respond
2 to the testimony of the institution and the responsible principal and responsible individual
3 and to answer questions posed by the designated hearing officer.

4 (4) If a hearing is requested, the institution, the responsible principal and responsible
5 individual, and the Department of Education shall be provided with at least ten (10) days
6 advance notice of the time and place of the hearing. If the institution is a Summer Food
7 Service Program, the notice of the time and date of the hearing shall be provided at least
8 five (5) days prior to the hearing, with the notice sent by certified mail, return receipt
9 requested.

10 (5) An appellant program sponsor may submit written information in support of its
11 position at the time it files its appeal and request for review by [with] a hearing officer. It
12 may also submit additional written information to the designated hearing officer up to
13 thirty (30) calendar days after receipt of the division notice of adverse action. In the case
14 of the Summer Food Service Program, the appellant program sponsor may submit
15 additional written information up to seven (7) calendar days after filing the appeal and
16 request for review.

17 Section 4. Appeal Procedures. (1) [(a)] The division shall forward any request for appeal
18 to the Director, Division of Administrative Hearings, Office of the Attorney General. The
19 request for appeal shall be accompanied by a copy of the notice of adverse action sent by
20 the Division of School and Community Nutrition.

21 (2) [(b)] The administrative hearing procedures of KRS Chapter 13B shall apply.

22 (3) The designated hearing officer shall make a determination based solely on the
23 information provided by the state agency, the institution, and the responsible principal

1 and responsible individual and based on federal and state laws, administrative
2 regulations, policies and procedures governing the program.

3 (4) Within sixty (60) days of the Department of Education's receipt of the request for an
4 appeal, or ten (10) days if the matter under appeal is a suspension of participation, the
5 designated hearing officer shall inform the Department of Education, the institution's
6 executive director and chairman of the board of directors, and the responsible principal
7 and responsible individual of the outcome of the appeal.

8 (5) In the case of the Summer Food Service Program, the hearing shall be held within
9 fourteen (14) days of the date of receipt of the request for an appeal and hearing, but not
10 before the appellant's written documentation is received. In the case of the Summer Food
11 Service Program, within five (5) working days after the appellant's hearing, or within
12 five (5) working days after receipt of written documentation if no hearing is to be held,
13 the designated hearing officer shall make a determination based on a full review of the
14 administrative record, and inform the appellant of the outcome of the appeal by certified
15 mail, return receipt requested.

16 (6) In the case of the Summer Food Service Program, the Department of Education's
17 action shall remain in effect during the appeal process. However, participating Summer
18 Food Service Program sponsors and sites may continue to operate the program during an
19 appeal of termination, and if the appeal results in the overturning of the Department of
20 Education's decision, reimbursement shall be paid for meals served during the appeal
21 process.

22 (7) Notwithstanding subsection 6 of this section, continued program operation shall not
23 be allowed if the Department of Education's action is based on imminent danger to the

1 health or welfare of children. If the Summer Food Service Program sponsor or site has
2 been terminated for this reason, the Department of Education shall specify this in its
3 notice of adverse action. Pursuant to 7 CFR 210.18(q)(9), 220.13(f)(2), 225.13(b)(12)
4 and 226.6(k) (5) ~~[(40)]~~ the decision of the hearing officer shall be the final administrative
5 determination.

6 (c) In case of a denial of an application to participate in the program, the determination of
7 the hearing officer shall either sustain the denial or shall direct that the appellant be
8 approved for limited or full participation.

9 (d) In case of a denial of all or part of a claim for reimbursement, start-up payment,
10 advance payment, or demand for refund of any overpayment, the determination of the
11 hearing officer shall either sustain the action under appeal or specify the amount of the
12 claim for reimbursement, start-up payment, advance payment, or refund of overpayment
13 to be paid.

14 (e) In the case of the termination of an appellant's participation in the program, the
15 determination of the hearing officer shall either sustain the termination or shall direct that
16 the appellant be permitted to continue participation in the program.